IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1101 OF 2005
IN
SUMMONS FOR JUDGMENT NO.825 OF 2004
IN
SUIT NO.3208 OF 2001

Saptashringimata Milk & Allied
Products Pvt.Ltd. .. Appellant

v/s.

Nilkamal Plastics Limited & anr. .. Respondents

Mr.S.M.Sabrad for the appellant.

Mr.K.S.Shetty for the respondent No.1.

Mr.Chandrakant Chavan for the respondent No.2.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 13th December, 2005

P.C.

Heard Mr.S.M.Sabrad, the learned counsel for the appellant.

2. We perused the impugned order and find no infirmity therein. The appellant who is defendant No.1 set up the defence that payment has already been made to the defendant No.2 in respect of plaintiffs' claim and therefore, no liability can be fastened on them. The learned Judge has recorded that the defendant No.1-appellant herein was called upon to produce the proof of payment of Rs.85,061/- said to have been made to the defendant No.2 through the bank account or the pass-book of the bank but the defendant No.1

failed to produce the same. We also asked the learned counsel for the appellant to show us the proof of payment of Rs.85,061 said to have been made to the defendant No.2 but no proof was shown.

3. The finding of the learned trial Judge, in the circumstances, that there is no triable issue emanating from the defence of defendant No.1 cannot be said to suffer from any legal infirmity. The learned trial Judge, as a matter of fact, showed mercy and despite the fact that there was no defence, granted conditional leave on deposit of Rs.1,00,000/-.

4. No interference is called for in the impugned order. Appeal is dismissed in limine.

5. We grant further time of six weeks to the defendant No.1 to deposit the amount as directed in the impugned order.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)